

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

WYCKOFF FARMS,  
INCORPORATED, a Washington  
Corporation,

Plaintiff,

v.

INDUSTRIAL CONTROL  
CONCEPTS, INC. d/b/a ICC, INC., a  
Missouri corporation, ICC  
NORTHWEST, INC., an Oregon  
corporation, and ICC TURNKEY,  
INC., a Missouri corporation,

Defendants.

No. 4:20-CV-5095-TOR

STIPULATED PROTECTIVE  
ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Agreement is consistent with FRCP 26(c). The parties certify that they have met and conferred regarding this protective order as required by LCR 37.

This protective order does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential

1 treatment under the applicable legal principles, and it does not presumptively entitle  
2 parties to file confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include the following documents and tangible  
5 things produced or otherwise exchanged: All information and documents marked  
6 “CONFIDENTIAL” by the designating subscribing stakeholders relating to their  
7 business(es), certain financial and billing information, invoicing, expenses, tax  
8 information, products manufactured, processed, and/or sold by those stakeholders,  
9 including but not limited to manufacturing or processing data, pricing information  
10 relating to those products, formulas, customer lists, and other information or  
11 documents marked “CONFIDENTIAL” relating to any trade secrets or other  
12 proprietary information.

13 3. SCOPE

14 The protections conferred by this Agreement cover not only confidential  
15 material (as defined above), but also (1) any information copied or extracted from  
16 confidential material; (2) all copies, excerpts, summaries, or compilations of  
17 confidential material; and (3) any testimony, conversations, or presentations by  
18 parties or their counsel that might reveal confidential material.

19 However, the protections conferred by this Agreement do not cover  
20 information that is in the public domain or becomes part of the public domain  
21 through trial or otherwise.

22 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

23 4.1 Basic Principles. A receiving party may use confidential material that  
24 is disclosed or produced by another party or by a non-party in connection with this  
25 case only for prosecuting, defending, or attempting to settle this litigation.  
26 Confidential material may be disclosed only to the categories of persons and under

1 the conditions described in this Agreement. Confidential material must be stored and  
2 maintained by a receiving party at a location and in a secure manner that ensures that  
3 access is limited to the persons authorized under this Agreement.

4 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
5 otherwise ordered by the Court or permitted in writing by the designating party, a  
6 receiving party may disclose any confidential material only to:

7 (a) the receiving party’s counsel of record in this action, and  
8 employees of counsel to whom it is reasonably necessary to disclose the information  
9 for this litigation, and the receiving party’s insurer(s);

10 (b) the officers, directors, and employees (including in house  
11 counsel) of the receiving party to whom disclosure is reasonably necessary for this  
12 litigation, unless the parties agree that a particular document or material produced is  
13 for “Attorney’s Eyes Only” and is so designated;

14 (c) experts and consultants to whom disclosure is reasonably  
15 necessary for this litigation and who have signed the “Acknowledgment and  
16 Agreement to Be Bound” (**Exhibit A**);

17 (d) the court, court personnel, and court reporters and their staff;

18 (e) copy or imaging services retained by counsel to assist in the  
19 duplication of confidential material, provided that counsel for the party retaining the  
20 copy or imaging service instructs the service not to disclose any confidential material  
21 to third parties and to immediately return all originals and copies of any confidential  
22 material;

23 (f) during their depositions, witnesses in the action to whom  
24 disclosure is reasonably necessary and who have signed the “Acknowledgment and  
25 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating  
26 party or ordered by the Court. Pages of transcribed deposition testimony or exhibits

1 to depositions that reveal confidential material must be separately bound by the court  
2 reporter and may not be disclosed to anyone except as permitted under this  
3 Agreement;

4 (g) the author or recipient of a document containing the information  
5 or a custodian or other person who otherwise possessed or knew the information.

6 4.3 Filing Confidential Material. Before filing confidential material or  
7 discussing or referencing such material in court filings, the filing party shall confer  
8 with the designating party to determine whether the designating party will remove  
9 the confidential designation, whether the document can be redacted, or whether a  
10 motion to seal or stipulation and proposed order is warranted. During the meet and  
11 confer process, the designating party must identify the basis for sealing the specific  
12 confidential information at issue, and the filing party shall include this basis in its  
13 motion to seal, along with any objection to sealing the information at issue. See, also,  
14 Court's Second Amended Bench Trial Scheduling Order, ¶ 6 C.  
15  
16  
17

18  
19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection.  
21 Each person or entity that designates information or items for protection under this  
22 Agreement must take care to limit any such designation to specific material that  
23 qualifies under the appropriate standards. The designating party must designate for  
24 protection only those parts of material, documents, items, or oral or written  
25 communications that qualify, so that other portions of the material, documents,  
26

1 items, or communications for which protection is not warranted are not swept  
2 unjustifiably within the ambit of this Agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations  
4 that are shown to be clearly unjustified or that have been made for an improper  
5 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or  
6 to impose unnecessary expenses and burdens on other parties) expose the  
7 designating party to sanctions.

8 If it comes to a designating party's attention that information or items that it  
9 designated for protection do not qualify for protection, the designating party must  
10 promptly notify all other parties that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in  
12 this Agreement, or as otherwise stipulated or ordered, disclosure or discovery  
13 material that qualifies for protection under this Agreement must be clearly so  
14 designated before or when the material is disclosed or produced.

15 (a) Information in documentary form (*e.g.*, paper or electronic  
16 documents and deposition exhibits, but excluding transcripts of depositions or other  
17 pretrial or trial proceedings): the designating party must affix the word  
18 "CONFIDENTIAL" to each page that contains confidential material. If only a  
19 portion or portions of the material on a page qualifies for protection, the producing  
20 party also must clearly identify the protected portion(s) (*e.g.*, by highlighting the  
21 confidential material or making appropriate markings in the margins).

22 (b) Testimony given in deposition or in other pretrial proceedings:  
23 the parties and any participating non-parties must identify on the record, during the  
24 deposition or other pretrial proceeding, all protected testimony, without prejudice to  
25 their right to so designate other testimony after reviewing the transcript. Any party  
26 or non-party may, within fifteen days after receiving the transcript of the deposition

1 or other pretrial proceeding, designate portions of the transcript, or exhibits thereto,  
2 as confidential. If a party or non-party desires to protect confidential information at  
3 trial, the issue should be addressed during the pre-trial conference.

4 (c) Other tangible items: the producing party must affix in a  
5 prominent place on the exterior of the container or containers in which the  
6 information or item is stored the word “CONFIDENTIAL.” If only a portion or  
7 portions of the information or item warrant protection, the producing party shall  
8 identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
10 failure to designate qualified information or items does not, standing alone, waive  
11 the designating party’s right to secure protection under this Agreement for such  
12 material. Upon timely correction of a designation, the receiving party must make  
13 reasonable efforts to ensure that the material is treated in accordance with the  
14 provisions of this Agreement.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any party or non-party may challenge a  
17 designation of confidentiality at any time. Unless a prompt challenge to a  
18 designating party’s confidentiality designation is necessary to avoid foreseeable,  
19 substantial unfairness, unnecessary economic burdens, or a significant disruption or  
20 delay of the litigation, a party does not waive its right to challenge a confidentiality  
21 designation by electing not to mount a challenge promptly after the original  
22 designation is disclosed.

23 6.2 Meet and Confer. The parties must make every attempt to resolve any  
24 dispute regarding confidential designations without court involvement. Any motion  
25 regarding confidential designations or for a protective order must include a  
26 certification, in the motion or in a declaration or affidavit, that the movant has

engaged in a good faith meet-and-confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality. The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the Court rules on the challenge.

## 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a Court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or Court order; and

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Agreement. Such notification shall include a copy of this Agreement.

## 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this Agreement, the receiving party must immediately (a) notify in writing the

1 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve  
2 all unauthorized copies of the protected material, (c) inform the person or persons to  
3 whom unauthorized disclosures were made of all the terms of this Agreement, and  
4 (d) request that such person or persons execute the “Acknowledgment and  
5 Agreement to Be Bound” that is attached hereto as **Exhibit A**.

6  
7 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
8 **PROTECTED MATERIAL**

9 When a producing party gives notice to receiving parties that certain  
10 inadvertently produced material is subject to a claim of privilege or other protection,  
11 the party making the claim may notify any party that received the information of the  
12 claim and the basis for it. After being notified, a party must promptly sequester the  
13 specified information and any copies it has; must not use or disclose the information  
14 until the claim is resolved; must take reasonable steps to retrieve the information if  
15 the party disclosed it before being notified; and may promptly present the  
16 information to the Court under seal for a determination of the claim. The producing  
17 party must preserve the information until the claim is resolved. This provision is  
18 not intended to modify whatever procedure may be established in an e-discovery  
19 order or Agreement that provides for production without prior privilege review.

20 **10. TERMINATION AND RETURN OF DOCUMENTS**

21 Within 60 days after the termination of this action, including all appeals, each  
22 receiving party must return all confidential material to the producing party, including  
23 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon  
24 appropriate methods of destruction.

25 Notwithstanding this provision, all counsel are entitled to retain one archival  
26 copy of all documents filed with the court, trial, deposition, and hearing transcripts,



1 correspondence, deposition and trial exhibits, expert reports, attorney work product,  
2 and consultant and expert work product, even if such materials contain confidential  
3 material.

4 The confidentiality obligations imposed by this Agreement shall remain in  
5 effect until a designating party agrees otherwise in writing or a court orders  
6 otherwise.

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 DATED: November 8, 2021

s/ Ai-Li Chiong-Martinson  
Attorneys for Plaintiff(s)

11 DATED: November 8, 2021

s/ Robert W. Novasky  
Attorneys for Defendants

13 PURSUANT TO STIPULATION, IT IS SO ORDERED.

14 IT IS FURTHER ORDERED that the production of any documents in this  
15 proceeding shall not, for the purposes of this proceeding or any other federal or state  
16 proceeding, constitute a waiver by the producing party of any privilege applicable  
17 to those documents, including the attorney-client privilege, attorney work-product  
18 protection, or any other privilege or protection recognized by law.

19 DATED November 9, 2021.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare  
under penalty of perjury that I have read in its entirety and understand the Stipulated  
Protective Order that was issued by the US District Court for the Eastern District of  
Washington on \_\_\_\_\_[date] in the case of *Wyckoff Farms, Inc., vs.*  
*Industrial Control Concepts, Inc., et al*, No 4:20-cv-05095-TOR. I agree to comply  
with and to be bound by all the terms of this Stipulated Protective Order and I  
understand and acknowledge that failure to so comply could expose me to sanctions  
and punishment in the nature of contempt. I solemnly promise that I will not disclose  
in any manner any information or item that is subject to this Stipulated Protective  
Order to any person or entity except in strict compliance with the provisions of this  
Order.

I further agree to submit to the jurisdiction of the US District Court for the  
Eastern District of Washington for the purpose of enforcing the terms of this  
Stipulated Protective Order, even if such enforcement proceedings occur after  
termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_